A

PP v. PRABU NADARAJA

COURT OF APPEAL, PUTRAJAYA
AHMADI ASNAWI JCA
ABDUL RAHMAN SEBLI JCA
KAMARDIN HASHIM JCA
B [CRIMINAL APPEAL NO: N-06B-57-10-2017]
9 OCTOBER 2019

CRIMINAL PROCEDURE: *Appeal – Appellate intervention – High Court affirmed order of acquittal and discharge of accused by Magistrate at close of*
C *prosecution's case – Court of Appeal found prima facie case established and case reverted for accused to enter defence – Magistrate again acquitted accused on ground that prosecution failed to prove case beyond reasonable doubt – Whether Magistrate allowed to revisit prosecution's evidence after Court of Appeal found prima facie case – Whether amounted to serious error warranting appellate intervention*

D

The respondent, a senior police officer, was charged with an offence of outraging the modesty of his subordinate, an offence punishable under s. 354 of the Penal Code. At the close of the prosecution's case, the Magistrate, finding that the prosecution had failed to establish a *prima facie* case, acquitted the respondent, principally on the ground that the complainant was
E not a credible witness. The High Court affirmed the decision but, on appeal, the Court of Appeal ('CA') set aside the acquittal and ordered the respondent to enter his defence to the charge. At the conclusion of the trial the respondent was again acquitted by the Magistrate on the ground that his explanation had cast a reasonable doubt on the prosecution's case. The High
F Court affirmed the decision of the Magistrate. Hence, this appeal on the ground that, whether, in deciding whether the case for the prosecution had been proved beyond reasonable doubt at the conclusion of the trial, it was correct in law for the Magistrate to embark on a re-evaluation of the evidence adduced by the prosecution, in particular, the evidence of the complainant
G whose credibility he doubted at the close of the prosecution's case and which he continued to doubt at the close of the defence's case.

Held (allowing appeal)
Per Abdul Rahman Sebli JCA delivering the judgment of the court:

H **(1)** By allowing the prosecution's appeal and setting aside the Magistrate's finding at the close of the prosecution's case, the CA must necessarily have found that the complainant, being the lynchpin of the prosecution's case, was a credible witness, thus establishing the fact that the respondent did the act alleged against him, *ie*, touching the complainant's right breast with his left hand. The finding by the CA that
I a *prima facie* case had been established against the respondent must, as a matter of law, be taken as if it was a finding by the Magistrate himself. The successful appeal by the prosecution would be rendered nugatory if

the Magistrate was still free to revisit the issue of whether the prosecution had adduced sufficient credible evidence to establish a *prima facie* case against the respondent at the close of its case. (paras 9 & 10)

(2) In the light of the CA's finding, the duty of the Magistrate at the conclusion of the trial was only to determine whether the respondent's explanation had rebutted or explained away the complainant's evidence that he touched her breast at the place and time specified in the charge. In so deciding, the Magistrate was not supposed to revisit, let alone reaffirm his earlier finding that the complainant was not a credible witness. The Magistrate had clearly re-evaluated the evidence given by the complainant and, having done so, expressed his doubt if the incident, as alleged by the complainant, had actually taken place. This was a serious error by the Magistrate warranting appellate intervention. (paras 15, 16 & 22)

(3) Section 173(m) of the Criminal Procedure Code ('CPC') requires the court, at the conclusion of the trial, to consider 'all the evidence adduced before the court'. But this does not mean the court must re-evaluate the prosecution's evidence and reassess the credibility of the witnesses because at the end of the prosecution's case, the prosecution's evidence had been subjected to a maximum evaluation and the witnesses found to be credible witnesses. The Magistrate had gone beyond what is required by s. 173(m) of the CPC when he conducted a second round of maximum evaluation of the prosecution's evidence. (paras 23 & 24)

(4) The explanation given by the respondent in his defence could not, considered objectively, have raised any reasonable doubt in the prosecution's case as it was a simple denial of the offence charged. In the light of the CA's finding that sufficient credible evidence had been adduced by the prosecution to establish a *prima facie* case against the respondent, it was wrong for the Magistrate to have entertained doubts on the respondent's guilt simply because of his lingering doubt on the credibility of the complainant due to her delay in making the police report against the respondent. For the doubt to be real and reasonable it must arise from or for want of evidence, which was not the case here as the complainant's evidence had been found to be credible by the CA. (paras 33, 34 & 36)

Case(s) referred to:

Balachandran v. PP [2005] 1 CLJ 85 FC ***(refd)***
D A Duncan v. PP [1980] 1 LNS 12 FC ***(refd)***
Duis Akim & Ors v. PP [2013] 9 CLJ 692 FC ***(refd)***
Mat v. PP [1963] 1 LNS 82 HC ***(refd)***
Miller v. Minister of Pensions [1947] 2 All ER 372 ***(refd)***
PP v. Dato' Seri Anwar Ibrahim (No 3) [1999] 2 CLJ 215 HC ***(refd)***
PP v. Mohd Radzi Abu Bakar [2006] 1 CLJ 457 FC ***(refd)***
PP v. Ong Cheng Heong [1998] 4 CLJ 209 HC ***(refd)***
PP v. Saimin & Ors [1971] 1 LNS 115 HC ***(refd)***

Legislation referred to:
Criminal Procedure Code, s. 173(h), (m)

Other source(s) referred to:
Underhill's Treaties on The Law of Criminal Evidence, 5th edn, vol 1, p 34

For the appellant - Tengku Intan Suraya Tengku Ismail; DPP
For the respondent - Hanif Hassan; M/s Hanif Hassan & Co

[Editor's note: Appeal from High Court, Negeri Sembilan; Criminal Appeal No: 41LB(A)-81-10-2016 (overruled).]

Reported by S Barathi

JUDGMENT

Abdul Rahman Sebli JCA:

[1] In the Magistrate's Court at Seremban, the respondent, a senior police officer attached to the Seremban police headquarters was charged with outraging the modesty of his subordinate and the charge against him was as follows:

> Bahawa kamu pada 29/11/2012 jam lebih kurang 12.30 tengah hari di dalam lif IPK Negeri Sembilan, Jalan Campbell, di dalam Daerah Seremban, di dalam Negeri Sembilan telah dengan sengaja menggunakan kekerasan jenayah ke atas Mutiary Binawati bt Mohd Sharif, KP:781219-05-5044, dengan cara memegang buah dada sebelah kanan dengan menggunakan tangan kiri dengan niat untuk mencabul kehormatan. Oleh yang demikian kamu telah melakukan kesalahan yang boleh dihukum di bawah seksyen 354 Kanun Kesiksaan.

[2] He claimed trial to the charge and was acquitted at the close of the prosecution's case without his defence being called as the learned Magistrate found that the prosecution failed to establish a *prima facie* case against him, principally on the ground that the complainant (SP3) was not a credible witness.

[3] The decision was affirmed by the High Court but on a successful appeal by the prosecution to this court, the order of acquittal was set aside and the respondent was ordered to enter his defence to the charge.

[4] The respondent's defence was duly called and at the conclusion of the trial, the learned Magistrate again acquitted him of the charge, this time on the ground that his explanation had cast a reasonable doubt in the prosecution's case. The defence raised by the respondent was that he never touched the complainant's breast, left or right.

[5] The prosecution appealed against the order of acquittal and again it was affirmed by the High Court, hence the present appeal before us. Having considered the arguments by both sides, both written and oral, we allowed the prosecution's appeal by a unanimous decision. We convicted the respondent of the offence charged and sentenced him to two years imprisonment with effect from the date of judgment. These are the grounds of our decision.

[6] To recapitulate, the first acquittal order was because the learned Magistrate found that the prosecution failed to establish a *prima facie* case against the respondent and the second was because the learned Magistrate found that the prosecution failed to prove its case beyond reasonable doubt. A

[7] The only issue before us was whether, in deciding whether the case for the prosecution had been proved beyond reasonable doubt at the conclusion of the trial, it was correct in law for the learned Magistrate to embark on a re-evaluation of the evidence adduced by the prosecution, in particular the evidence of the complainant whose credibility he doubted at the close of the prosecution's case and which he continued to doubt at the close of the defence case. B C

[8] We answered the question in the negative. With due respect to the learned Magistrate, it was not open for him to continue questioning the credibility of the complainant after this court had ruled, in the exercise of its appellate criminal jurisdiction, that a *prima facie* case had been established against the respondent. D

[9] By allowing the prosecution's appeal and setting aside the learned Magistrate's finding at the close of the prosecution's case, this court must necessarily have found that the complainant, being the lynchpin of the prosecution's case, was a credible witness, thus establishing the fact that the respondent did the act alleged against him, ie, touching her right breast with his left hand. The learned Magistrate must accept this finding of fact by this court, irrespective of what his own view was on the complainant's credibility as a witness at the close of the prosecution's case. E

[10] The finding by this court that a *prima facie* case had been established against the respondent must as a matter of law be taken as if it was a finding by the learned Magistrate himself. This has to be so, for otherwise the successful appeal by the prosecution would be rendered nugatory if the learned Magistrate was still free to revisit the issue of whether the prosecution had adduced sufficient credible evidence to establish a *prima facie* case against the respondent at the close of its case. F G

[11] The learned Magistrate was of course free to disagree with the decision of this court in ordering for the defence to be called but he must obey it. Judicial discipline and the doctrine of *stare decisis* prohibit him from defying it, for otherwise there will be chaos in the administration of criminal justice in this country. H

[12] The effect in law of a finding either by the trial court or by an appellate court that a *prima facie* case had been established against the accused is well settled, that if the accused chooses to remain silent when called upon to state his defence, he must be convicted of the offence charged (see *PP v. Mohd Radzi Abu Bakar* [2006] 1 CLJ 457, FC). This reflects the high degree of proof required of the prosecution in establishing a *prima facie* case against the accused at the close of its case. I

[13] In *Balachandran v. PP* [2005] 1 CLJ 85, the Federal Court adopted the following definition given to the phrase "*prima facie* case" by the learned authors of *Mozley and Whiteley's Law Dictionary*, 11th edn:

> A litigating party is said to have a *prima facie* case when the evidence in his favour is sufficiently strong for his opponent to be called on to answer it. A *prima facie* case, then, is one which is established by sufficient evidence, and can be overthrown only by rebutting evidence adduced by the other side.

[14] Section 173(h) of the Criminal Procedure Code (CPC) has since been amended by inserting sub-para. (iii) which accords with the dictionary meaning given above. The subparagraph reads as follows:

> (iii) For the purpose of subparagraphs (i) and (ii), a *prima facie* case is made out against the accused where the prosecution has adduced credible evidence proving each ingredient of the offence which if unrebutted or unexplained would warrant a conviction.

[15] In the light of this court's finding that a *prima facie* case had been established against the respondent, the duty of the learned Magistrate at the conclusion of the trial was only to determine whether the respondent's explanation had rebutted or explained away the complainant's evidence that he touched her breast at the place and time specified in the charge.

[16] In so deciding, the learned Magistrate was not supposed to revisit, let alone to reaffirm his earlier finding that the complainant was not a credible witness. The following observations by the Federal Court in *Duis Akim & Ors v. PP* [2013] 9 CLJ 692 are relevant:

> [38] We note that when assessing the defence the learned trial judge surprisingly revisited his earlier findings upon which he called for the defence. Such approach is quite contrary to the principle of maximum evaluation of the evidence adduced at the close of the prosecution's case. Indeed in his judgment the learned trial judge made it very clear that he had conducted a maximum evaluation of the evidence adduced by the prosecution before calling for the defence.

[17] The difference in the facts of the case from the facts of the present case is of no significance as the principle laid down is applicable to the situation obtained in the present appeal, *albeit* in a different way. As we mentioned, the reason why the learned Magistrate acquitted the respondent at the close of the prosecution's case was because he found the complainant to be an unreliable witness.

[18] But the fact is, this finding had been found to be wrong by this court. Therefore, it was not open to the learned Magistrate to again, for the second time, question the credibility of the complainant when deciding whether the case against the respondent had been proved beyond reasonable doubt.

[19] That however was precisely what the learned Magistrate did in this case. For comparison and for a clearer picture of the issue, we reproduce below the learned Magistrate's evaluation of the complainant's evidence at the close of the prosecution's case and his evaluation at the close of the defence case. First, his evaluation at the close of the prosecution's case:

> Mahkamah ini telah membuat penilaian sepenuhnya terhadap semua keterangan yang ada dan beberapa faktor yang telah dipertimbangkan sebelum Mahkamah membuat keputusan. Berkenaan dengan isu keterangan saksi SP3 dan SP4, Mahkamah ini berasakan kredibiliti kedua-dua saksi ini adalah diragui atas sebab beberapa faktor. Antaranya adalah berkenaan alasan untuk membuat laporan polis lewat kerana melibatkan pegawai polis dan maruah diri saksi SP3 yang mana Mahkamah ini merasakan ianya tidak munasabah. Melihat kepada sifat dan kejadian yang berlaku di dalam kes ini, seseorang mangsa sudah pasti mengambil tindakan yang sewajarnya, tanpa mengira status si pelaku, dan segera untuk membuat laporan polis kerana ianya melibatkan maruah serta harga diri mangsa itu sendiri. Suami SP3 juga seorang anggota polis dan seharusnya lebih arif dengan tindakan sepatutnya iaitu membuat laporan polis pada kadar segera.
>
> Walau bagaimanapun, faktor kelewatan membuat laporan polis tidaklah menjadi material *per se* di dalam kes ini namun apabila laporan polis dirujuk, terdapat beberapa kejadian yang dikatakan telah berlaku sebelum ini melibatkan Tertuduh dan SP3. Mahkamah ini tidak berniat untuk menyatakan bahawa seseorang itu adalah terhad untuk membuat pengaduan beliau namun melihat kepada tempoh masa yang diambil untuk membuat laporan polis serta isi kandungannya yang meliputi kejadian terdahulu dan tiada pendakwaan dijalankan, Mahkamah berasa ragu dengan motif atau tujuan sebenar laporan polis dibuat sama ada ianya benar-benar terjadi ataupun sebaliknya. SP3 sepanjang masa sebelum kejadian tidak pernah membuat sebarang laporan polis berkaitan kejadian sebelum itu ataupun memaklumkan perkara tersebut kepada pegawai atasan sebelum kes ini berlaku.
>
> Selain daripada itu, keterangan yang diberikan oleh SP3 dan SP4 juga mempunyai percanggahan antara satu sama lain. Percanggahan ini menjadi material apabila tiadanya keterangan sokongan lain yang dapat menyokong keterangan oleh SP3 atau SP4.

[20] Although the learned Magistrate said that the complainant's delay in making the police report was not "material *per se*", it is clear that this factor weighed heavily in his mind in coming to the conclusion that the complainant was not a credible witness. In fact, from the drift of his judgment, it was the main reason why he found that the prosecution failed to establish a *prima facie* case against the respondent.

[21] And when he came to deal with the whole case at the conclusion of the trial, the learned Magistrate repeated, in fact reproduced, word for word in some parts of his judgment, his finding at the close of the prosecution's case that the complainant was not a credible witness. This is patently clear from the following passages in his grounds of judgment:

A Mahkamah ini telah membuat penilaian semula terhadap keterangan yang diberikan oleh SP3 selaku mangsa di dalam kes ini di mana tidak terdapat keterangan secara terus daripada SP3 sendiri ataupun demeanour saksi ini yang menerangkan atau menunjukkan bagaimana kejadian cabul tersebut berlaku seperti yang didakwa di dalam kertas pertuduhan iaitu memegang buah dada kanan SP3 dengan tangan kiri Tertuduh. Kejadian mencabul
B ini perlu dibuktikan secara spesifik seperti yang didakwa di atas kertas pertuduhan oleh pihak pendakwaan dimana kegagalan untuk membuktikannya dengan sepenuhnya dan secara spesifik akan memprejudiskan pihak Tertuduh.

Berkenaan dengan isu keterangan saksi SP3 dan SP4, Mahkamah ini
C berasakan kredibiliti kedua-dua saksi ini adalah diragui atas sebab beberapa faktor. Antaranya adalah berkenaan alasan untuk membuat laporan polis lewat kerana melibatkan pegawai polis dan maruah diri saksi SP3 yang mana Mahkamah ini merasakan ianya tidak munasabah.

Melihat kepada sifat dan kejadian yang berlaku di dalam kes ini,
D seseorang mangsa sudah pasti mengambil tindakan yang sewajarnya, tanpa mengira status si pelaku, dan segera untuk membuat laporan polis kerana ianya melibatkan maruah serta harga diri mangsa itu sendiri. Suami SP3 juga seorang anggota polis dan seharusnya lebih arif dengan tindakan sepatutnya iaitu membuat laporan polis pada kadar segera.

Walau bagaimanapun, faktor kelewatan membuat laporan polis tidaklah
E menjadi material *per se* di dalam kes ini namun apabila laporan polis dirujuk, terdapat beberapa kejadian yang dikatakan telah berlaku sebelum ini melibatkan Tertuduh dan SP3. Mahkamah ini tidak berniat untuk menyatakan bahawa seseorang itu adalah terhad untuk membuat pengaduan beliau namun melihat kepada tempoh masa yang diambil untuk membuat laporan polis serta isi kandungannya yang meliputi
F kejadian terdahulu dan tiada pendakwaan dijalankan, Mahkamah berasa ragu dengan motif atau tujuan sebenar laporan polis dibuat sama ada ianya benar-benar terjadi ataupun sebaliknya. SP3 sepanjang masa sebelum kejadian tidak pernah membuat sebarang laporan polis berkaitan kejadian sebelum itu ataupun memaklumkan perkara tersebut kepada pegawai atasan sebelum kes ini berlaku.

G Selain daripada itu, keterangan yang diberikan oleh SP3 dan SP4 juga mempunyai percanggahan antara satu sama lain. Percanggahan ini menjadi material apabila tiadanya keterangan sokongan lain yang dapat menyokong keterangan oleh SP3 atau SP4. Keterangan oleh SP3 sebelum kejadian yang mana beliau takut apabila melihat Tertuduh keluar daripada
H tandas tidak dapat difahami motifnya oleh Mahkamah ini kerana SP3 seolah-olah telah mengagak atau meneka yang Tertuduh membuat sesuatu terhadap beliau. Tiada sebarang keterangan yang menunjukkan Tertuduh pernah atau telah mengugut atau mengatakan yang dia akan membuat sesuatu kepada SP3 sebelum kejadian yang pastinya akan membenarkan perasaan takut SP3 ketika itu.

I **[22]** In the first and second paragraphs above, the learned Magistrate had clearly re-evaluated the evidence given by the complainant and having done that, expressed in paragraph three, he doubted if the incident as alleged by the complainant had actually taken place. We found this to be a serious error by the learned Magistrate warranting appellate intervention.

[23] Section 173(m) of the CPC requires the court at the conclusion of the trial to consider "all the evidence adduced before the court". But this does not mean that the court must re-evaluate the prosecution's evidence and reassess the credibility of the witnesses because at the end of the prosecution's case, the prosecution's evidence had been subjected to a maximum evaluation and the witnesses found to be credible witnesses (see *PP v. Ong Cheng Heong* [1998] 4 CLJ 209; *PP v. Dato' Seri Anwar Ibrahim (No 3)* [1999] 2 CLJ 215; *Balachandran v. PP* (*supra*); *PP v. Mohd Radzi Abu Bakar* [2006] 1 CLJ 457).

[24] The learned Magistrate had gone beyond what is required by s. 173(m) of the CPC when he conducted a second round (the first at the close of the prosecution's case) of maximum evaluation of the prosecution's evidence when he said, towards the end of his judgment:

> Oleh yang demikian, setelah Mahkamah mendengar dan meneliti keseluruhan keterangan daripada saksi pembelaan dan setelah menilai semula kesemua keterangan saksi-saksi peringkat pendakwaan beserta eksibit-eksibit yang telah dikemukakan, dan setelah membaca hujahan bertulis pihak-pihak di akhir kes pendakwaan dan pembelaan daripada kedua-dua belah pihak, juga akhirnya Mahkamah telah menggunapakai prinsip "maximum evaluation standard" di dalam menilai keseluruhan keterangan kes pendakwaan dan pembelaan, Mahkamah berpuashati dan memutuskan bahawa pihak pembelaan telah berjaya mewujudkan keraguan munasabah di dalam kes ini dan pihak pendakwaan telah gagal membuktikan kes mereka terhadap Tertuduh melampaui keraguan yang munasabah. Oleh itu, berdasarkan peruntukan di bawah seksyen 173(m)(iii) Kanun Tatacara Jenayah, Mahkamah dengan ini melepas dan membebaskan Tertuduh daripada pertuduhan.

[25] Once the defence had been ordered to be called, either by the trial court itself or by an appellate court on appeal, the creditworthiness of the prosecution witnesses is no longer in issue. But if at all it becomes an issue, its determination must be left to the appellate court in the event of an appeal, and not for the trial court.

[26] *Mat v. PP* [1963] 1 LNS 82; [1963] MLJ 263 is the guiding principle for the courts to apply at the conclusion of the trial where no statutory presumption operates against the accused to disprove any element of the offence charged.

[27] The question in the present appeal was whether, on the evidence before the court and the probabilities of the case, a real and reasonable doubt had been raised in the prosecution's case by the respondent's denial of the offence charged.

[28] The rule is that if the accused's explanation raises a reasonable doubt in the court's mind as to the guilt of the accused, then the accused must be acquitted even if the court does not accept or believe his explanation. The rationale behind the rule is very simple. The legal burden is on the prosecution throughout the trial to prove the guilt of the accused and not for the accused to prove his innocence.

[29] This brings us to the kind of doubt that the court can entertain as being reasonable. First of all, it is important to always remember that the prosecution is only required to prove its case beyond reasonable doubt and not beyond the shadow of a doubt. We reproduce below the oft-quoted pronouncement by Denning J (as he then was) in *Miller v. Minister of Pensions* [1947] 2 All ER 372 at p. 373:

> That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it permitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible but not in the least probable', the case is proved beyond reasonable doubt.

[30] Sharma J spoke in similar vein in *Public Prosecutor v. Saimin & Ors* [1971] 1 LNS 115; [1971] 2 MLJ 16 when he said:

> The following definition of 'reasonable doubt' is often quoted:
>
> > It is not mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which after the entire comparison and consideration of all the evidence leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.
>
> It has again been said that "reasonable doubt" is the doubt which makes you hesitate as to the correctness of the conclusion which you reach. If under your oaths and upon your consciences, after you have fully investigated the evidence and compared it in all its parts, you say to yourself I doubt if he is guilty, then it is a reasonable doubt. It is a doubt which settles in your judgment and finds a resting place there. Or as sometimes said, it must be a doubt so solemn and substantial as to produce in the minds of the jurors some uncertainty as to the verdict to be given. A reasonable doubt must be a doubt arising from the evidence or want of evidence and cannot be an imaginary doubt or conjecture unrelated to evidence.

[31] In *Underhill's Treaties on The Law of Criminal Evidence* (5th edn. vol. 1 at p. 34), the following passage can be found:

> A vague conjecture or an inference of the possibility of the innocence of the accused is not a reasonable doubt. A reasonable doubt is one which arises from a consideration of all the evidence in a fair and reasonable way. There must be a candid consideration of all the evidence and if, after this candid consideration is had by the jurors, there remains in their minds a conviction of the guilt of the accused, then there is no room for a reasonable doubt.

[32] The test is therefore objective rather than subjective. What was the doubt that the learned Magistrate entertained in coming to a finding that the respondent had succeeded in casting a reasonable doubt in the prosecution's case? Going by the grounds of judgment, it is clear that the doubt arose from his doubt on the credibility of the complainant.

[33] The explanation given by the respondent in his defence could not, considered objectively, have raised any reasonable doubt in the prosecution's case as it was a simple denial of the offence charged (see *D A Duncan v. PP* [1980] 1 LNS 12; [1980] 2 MLJ 195, FC).

[34] In the light of this court's finding that sufficient credible evidence had been adduced by the prosecution to establish a *prima facie* case against the respondent (and this includes most importantly the evidence of the complainant), it was wrong for the learned Magistrate to have entertained doubts on the respondent's guilt simply because of his lingering doubt on the credibility of the complainant due to her delay in making the police report against the respondent.

[35] It was not permissible for the learned Magistrate to use the same reason that he used to acquit the respondent at the close of the prosecution's case (held to be wrong by this court) to acquit the respondent at the close of the defence case, particularly where the defence was a mere denial of the offence charged.

[36] For the doubt to be real and reasonable it must arise from or for want of evidence, which is not the case in the present appeal as the complainant's evidence had been found to be credible by this court, contrary to the finding of the learned Magistrate.

[37] It was for all the reasons aforesaid that we allowed the prosecution's appeal and convicted the appellant of the offence charged.